

**DYNAMAC**  
CORPORATION  
Environmental Services

---

May 20, 1997

Mr. Ron Stewart  
U.S. Environmental Protection Agency  
Region VII  
726 Minnesota Avenue (PLMG/COMO)  
Kansas City, KS 66101

Reference: EPA Prime Contract No. 68-W4-0039

Subject: Consultant Consent

FOIA Exemption 4

Dear Mr. Stewart:

Pursuant to FAR 52.244-2 of the referenced contract, consent to enter into a Time and Materials type consultant agreement for 28 LOF/hrs. **Redacted**  
with JAMS/Endispute is hereby requested. We propose to acquire the services of JAMS/Endispute, an experienced mediation firm, to support the "Alternative Dispute Resolution for the West Lake Landfill," Work Assignment number C07023, under the referenced contract.

Attached is a copy of the proposed consultant agreement and a price negotiation memorandum for your review and approval. If additional information is required, please contact Mrs. Annette Bishop, Contracts Administrator (301) 417-6043.

Respectfully,



David A. Biver  
Vice President

cc: A. Cummings, Dynamac

Flow - Down Charges  
Dynamac - Estimate  
Settlement Process -

# TECHNICAL SERVICES AGREEMENT --- CONSULTANT

**DYNAMAC**  
**CORPORATION**

The Dynamac Building  
2275 Research Boulevard  
Rockville, MD 20850-3268

Telephone: 301-417-9800  
FAX: 301-417-9801

AGREEMENT  
NUMBER

JAMS/Endispute

Consultant

222 S. Riverside Plaza, Suite 1850

Address

Chicago, IL 60606

City State Zip

(800)445-4650 FAX: 312-655-9197

Telephone

Tax Identification Number

1. *Parties to this Agreement.* This agreement is made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, between Dynamac Corporation, a Delaware corporation hereinafter called DYNAMAC, with its headquarters located at 2275 Research Blvd., Rockville, Maryland, 20850-3268, and \_\_\_\_\_ JAMS/Endispute hereinafter called Consultant, with offices at 222 S. Riverside Plaza, Suite 1850, Chicago, IL. DYNAMAC desires to procure and Consultant desires to provide certain technical services. This Agreement between the parties shall constitute a basic Agreement, the terms and conditions of which shall apply to each Purchase Order issued by DYNAMAC and accepted by Consultant.

2. *Term.* The term of this Agreement shall commence on the date of execution of this Agreement and shall continue until terminated by the provisions of Article 16.

3. *Scope of Services.* Under the terms of this Agreement, Consultant shall provide the technical services listed in Addendum A which shall specify:

- a. Contract number and nature of work to be performed;
- b. Category of staffing of each individual required;
- c. Estimated start date and estimated completion date;
- d. Total not-to-exceed cost;
- e. Individual who will coordinate for DYNAMAC;
- f. Other information which is necessary to clarify the work.

Consultant shall provide the technical services according to the fees listed in Addendum A. DYNAMAC shall request such services in writing in a Purchase Order. Consultant shall provide the services requested and shall reply in writing to DYNAMAC's request within a reasonable time following receipt by Consultant of DYNAMAC's request. The Consultant is not authorized to start work until he receives a Purchase Order signed by DYNAMAC.

4. *Modification of Scope of Services.* DYNAMAC may at any time modify the scope of services upon written notice to Consultant specifying the desired modifications on the Purchase Order and, if required, Addendum A. Consultant shall at its discretion, agree to perform such services according to mutually-agreed-to-changes. A copy of the revised Purchase Order and modified Addendum A Form accepted and executed by Consultant shall be returned to DYNAMAC.
5. *Cancellation of Technical Services.* DYNAMAC may at any time cancel the performance of any technical services upon ten (10) days prior written notice to Consultant stating its intention to cancel and specifying the Purchase Order number and Addendum A Form to be canceled and the date upon which such cancellation shall be effective. In the event of such cancellation, DYNAMAC shall pay for reasonable and authorized services rendered and expenses incurred prior to the effective date of cancellation.
6. *Billing of Services.* Consultant shall invoice DYNAMAC "monthly" for the services rendered during the preceding "monthly" period using the form Addendum B. Payment shall be made by DYNAMAC approximately thirty (30) days following DYNAMAC receipt and approval of the invoice.
7. *Payment.* In consideration of the services rendered to DYNAMAC by Consultant under this agreement, DYNAMAC shall pay Consultant in accordance with the signed Purchase Order.

The fees listed in Attachment A are considered fixed and shall not be amended unless mutually agreed to in writing by both parties. Any estimates made by Consultant for the cost of services to DYNAMAC shall be made in good faith but shall in no event be higher than those charged to Consultant's most favored client or customer.

8. *Travel.* Consultant may be required to furnish services on DYNAMAC or other premises. DYNAMAC shall reimburse the Consultant for travel expenses (as authorized in Joint Travel Regulations) that have been authorized in writing including living expenses incident to such travel; however, travel time shall not be considered as time spent in furnishing services. All payments for such authorized expenses shall be made upon submission of Addendum C by the Consultant, including all receipts .
9. *Independent Consultant.* In furnishing services pursuant to this Agreement, the Consultant shall at all times be acting as an independent Consultant and shall be responsible for all income and other payroll-associated taxes. As such, the Consultant shall not be an employee of DYNAMAC and shall not by reason of this Agreement or services hereunder be entitled to participate in or to receive any benefit or right under any of the DYNAMAC employee benefit or insurance plans.
10. *Reassignment of Personnel.* Consultant shall not reassign any personnel without prior notification to DYNAMAC. All proposed substitutes shall have qualifications equal to or higher than the qualifications of the person to be replaced. DYNAMAC shall be notified of any proposed substitution at least thirty (30) days in advance of the substitution. Such notification shall include: (a) an explanation of the circumstances necessitating the substitution, (b) a complete resume of the proposed substitute, and (c) any other information requested by DYNAMAC in order to determine that the Consultant is maintaining the same high quality of personnel. If approved, such person shall be billed at a rate no higher than that of the person for whom the substitution was made.

11. *Non-Competing.* This Agreement is intended to secure Consultant's help and cooperation and Consultant agrees that during the term of this Agreement, Consultant shall not accept any employment or engage in work or business adverse to the interest of DYNAMAC insofar as such employment, work or business may involve or be closely related to matters referred to Consultant under this Agreement, or where any third party which competes with DYNAMAC in the field of this Agreement might be benefitted by the services rendered or information gained by the Consultant under this Agreement.
12. *Proprietary Rights.* In view of the confidential relations which are contemplated under this Agreement, the Consultant shall promptly disclose and assign to DYNAMAC any inventions or discoveries made or conceived resulting from the work done by Consultant for DYNAMAC during the term of this Agreement. Any such inventions or discoveries shall become and remain the property of DYNAMAC whether or not patent or other applications are filed thereon. From time to time, at DYNAMAC's request and at its expense, the Consultant shall make applications upon any such inventions or discoveries through attorneys or representatives designated by DYNAMAC for Letters Patent in the United States and in all other countries, and shall assign such applications to DYNAMAC or its order forthwith. The Consultant shall give DYNAMAC, its attorneys and representatives, all reasonable assistance in preparing such applications, and from time to time, upon request, shall execute all papers and do all things that may reasonably be required to protect the rights of DYNAMAC and vest in it or its nominees the inventions and Letters Patent herein provided for.
13. *Confidentiality.* The Consultant shall keep such written records and make such reports upon Consultants work under this Agreement as may be requested by DYNAMAC, and shall not disclose any DYNAMAC proprietary or confidential information obtained or developed during the term of this Agreement to any third person without the written consent of an authorized representative of DYNAMAC, either during the term of this Agreement or thereafter. Consultant fully understands that the proprietary and/or confidential information, while not being limited to, does include the identity of any DYNAMAC clients, data developed on any scientific studies, computer programs and associated data, and any proprietary DYNAMAC products. The Consultant shall deliver to DYNAMAC, at its request, all such records, together with any written material which may have been furnished to Consultant by DYNAMAC in connection with this Agreement, and thereafter Consultant shall make no further use or utilization of any such material and information without the prior written consent of DYNAMAC.
14. *Liability.* Consultant shall be liable for any and all loss, destruction or damage to any DYNAMAC-furnished materials when such loss, destruction or damage was due to the negligence of Consultant, and to the extent of restoring the lost, destroyed, or damaged materials, provided that such restoration can reasonably be performed by Consultant, and DYNAMAC furnishes Consultant with all source data necessary for such restoration.
15. *Indemnification.* Consultant hereby releases and agrees to defend, indemnify and hold harmless DYNAMAC, DYNAMAC's parent company, DYNAMAC's employees, directors, officers, agents and subcontractors from and against any and all liabilities, claims, damages, losses costs and expenses for all injuries to or death of any and all persons and for loss of or damage to property, including but not limited to loss or use thereof, arising directly in connections with the services described herein, where caused by the Consultant or his employees or agents.

16. *Termination of Agreement.* DYNAMAC may at any time terminate this Agreement upon five (5) days prior written notice to Consultant stating its intention to terminate and specifying the date upon which such termination shall be effective. All obligations of the Consultant under Articles 12 and 13 above shall survive and not be affected by any termination of this Agreement or its expiration.

Upon termination of this Agreement, the parties shall promptly return to each other all written matter of any type provided by the other party, which contains confidential information; the Consultant shall be paid for services rendered and reimbursable expenses incurred up to the date of such termination and not thereafter. Payment upon termination shall be accepted by the Consultant in full satisfaction of all claims and demands against DYNAMAC based upon or arising out of or in connection with this Agreement.

17. *Severability.* In the event that any of the provisions contained in this Agreement shall, for any reason, be held to be unenforceable in any respect under the laws of the State of Maryland, such unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such unenforceable provisions had never been contained herein.
18. *Oral Representations.* No employee, agent or representative of DYNAMAC has the authority to bind DYNAMAC to any oral representation concerning these services.
19. *Service of Notice.* Any notice required or permitted to be sent under this Agreement shall be delivered by hand or mailed by registered mail, return receipt requested, to the addresses of the parties first set forth in this Agreement. Notice so sent shall be deemed effective on the first day following the date of mail deposit.
20. *Entire Agreement.* This Agreement, including those provisions and conditions contained in DYNAMAC's purchase order, constitutes the entire Agreement of the parties. No waiver, notice, alteration, or modification of any of the provisions shall be binding unless in writing and signed by a duly authorized representative of DYNAMAC and of the Consultant. This Agreement shall be governed by the laws of the State of Maryland and there are no understandings or representations expressed or implied, not specified herein.

DYNAMAC Acceptance:		Consultant Acceptance:	
_____ Signature		_____ Signature	_____ Date
_____ David A. Biver Name		_____ Name (print)	
_____ Vice President Title		_____ Title	

*Addendum A*

SCHEDULE FOR TECHNICAL SERVICES

STAFFING/LABOR CATEGORIES	RATES <i>per hour</i>	HOURS
1. Mediator	Redacted	28
2.		
3.		

GENERAL DESCRIPTION OF WORK:

FOIA Exemption 4

See attached Statement of Work.

*(The above fees are fully burdened and considered fixed rates unless otherwise agreed to in writing by both parties)*

DYNAMAC Acceptance:		Consultant Acceptance:	
<hr/>		<hr/>	
Signature		Signature	Date
<u>David A. Biver</u>			
Name		Name (Print)	
<u>Vice President</u>			
Title		Title	

The Conflict of Interest provisions set forth in the prime contract are hereby made apart of this consultant agreement.

## **H-2 ORGANIZATIONAL CONFLICTS OF INTEREST (EPAAR 1552.209-71) (MAY 1994)**

- (a) The Subcontractor warrants that, to the best of the Subcontractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organization conflict of interest, as defined in FAR Subpart 9.5, or that the Subcontractor has disclosed all such relevant information.
- (b) Prior to commencement of any work, the Subcontractor agrees to notify the Dynamac Contracting Officer immediately that, to the best of its knowledge and belief, no actual or potential conflict of interest exists or to identify to the Dynamac Contracting Officer any actual or potential conflict of interest the firm may have. In emergency situations, however, work may begin but notification shall be made within three (3) working days.
- (c) The Subcontractor agrees that if an actual or potential organizational conflict of interest is identified during performance, the Subcontractor will immediately make a full disclosure in writing to the Dynamac Contracting Officer. This disclosure shall include a description of actions which the Subcontractor has taken or proposes to take, after consultation with Dynamac's Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict of interest. The Subcontractor shall continue performance until notified by Dynamac's Contracting Officer of any contrary action to be taken.
- (d) Remedies. Dynamac may terminate this Subcontract or any work assignment issued hereunder for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Subcontractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose it or misrepresented relevant information to Dynamac's Contracting Officer, Dynamac may terminate the Subcontract for default, debar the Subcontractor from Dynamac subcontracting, or pursue other remedies as may be permitted by law or this Subcontract.
- (e) The Subcontractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (e).

## **H-3 NOTIFICATION OF CONFLICTS OF INTEREST REGARDING PERSONNEL (EPAAR 1552.209-73) (MAY 1994)**

- (a) In addition to the requirements of the subcontract clause entitled "Organizational Conflicts of Interest," the following provisions with regard to employee personnel performing under this Subcontract shall apply until the earlier of the following two dates: the termination date of the affected employee(s) or the expiration date of the Subcontract.
- (b) The Subcontractor agrees to notify immediately the Dynamac Project Manager and the Dynamac Contracting Officer of (1) any actual or potential personal conflict of interest with regard to any of its employees working on or having access to information regarding this Subcontract, or (2) any such conflicts concerning lower-tier subcontractor employees or consultants working on or having access to information regarding this subcontract, when such conflicts have been reported to the Subcontractor. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing the subcontract work.
- (c) The Subcontractor agrees to notify the Dynamac Project Manager and Dynamac Contracting Officer prior to incurring costs for that employee's work when an employee may have a personal conflict of interest. In the event that the personal conflict of interest does not become known until after performance on the Subcontract begins, the Subcontractor shall immediately notify Dynamac's Contracting Officer of the personal conflict of interest. The Subcontractor shall continue performance of this subcontract until notified by Dynamac's Contracting Officer of the appropriate action to be taken.
- (d) The Subcontractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (d).

## STATEMENT OF WORK

### Site Background

West Lake Landfill (the "Site"), Operable Unit No. 1, involves a remedial investigation/feasibility study (RI/FS) being performed by Cotter Corporation (N.S.L.), Laidlaw Waste Systems (Bridgeton), Inc., Rock Road Industries, Inc., and the U. S. Department of Energy.

In 1966, the Atomic Energy Commission (AEC) sold 8,700 tons of leached barium sulfate, together with other radioactive residues, to Continental Mining and Milling Company (Continental Mining). The radioactive residues were generated as by-products of uranium processing performed by the AEC's contractor. These processing residues were stored at the AEC's St. Louis Airport Storage Site. Continental Mining moved the radioactive residues to its facility at 9200 Latty Avenue in Hazelwood, Missouri. Eventually, Cotter purchased the radioactive residues and shipped all but the 8,700 tons of leached barium sulfate to its processing facility in Colorado.

In 1973, approximately 8,700 tons of radioactively contaminated leached barium sulfate residues were mixed with approximately 39,000 tons of soil, and the entire amount was disposed of in two areas of the Site. This material resulted from decontamination efforts undertaken by Cotter at 9200 Latty Avenue where the residues had been stored. Studies have indicated that these two areas of the landfill are contaminated with uranium-238, uranium-235, thorium-230, and radium-226. In addition to the radioactive materials in the landfill, groundwater at the Site is also contaminated with radioactive materials as well as other hazardous substances.

In 1993, EPA entered into an Administrative Order on Consent (AOC) for the performance of a RI/FS at the Site. As indicated above, Cotter Corporation, Laidlaw Waste Systems, Inc., Rock Road Industries, Inc., and the U. S. Department of Energy were signatories to this AOC.

### Mediation Support

To date, the four respondents to the AOC have shared the cost of work equally. While this allocation has worked for the RI/FS phase of the work, the upcoming remedial design/remedial action (RD/RA) will be substantially more costly, and some of the parties may have difficulty paying a 25% share. The RI/FS is still underway, so no Record of Decision (ROD) has been issued and it is not expected that a ROD will be issued before this mediation process is complete.

Despite the absence of projected remedial costs, both the PRPs and DOE are willing to proceed with a mediation effort. In particular, DOE seeks a greater degree of certainty



in its budget planning process, and along with the PRPs may see mediation as an opportunity to adopt a more equitable basis for liability than the current per capita scheme.

On December 5, 1996, a meeting of the St. Louis Site Task Force was conducted in St. Louis, Missouri. Those attending included DOE Assistant Secretary Thomas Grumbley, EPA Regional Administrator Dennis Gramms, as well as various other representatives of DOE, EPA, the State of Missouri, the City and County of St. Louis and staffers from interested Congressional offices in the state and affected district. At this meeting, DOE Assistant Secretary Grumbley announced that with regard to West Lake Landfill OU-1, EPA would "allocate the responsibility at the site as best as it can over the next six months or so, so that they can tell us what percentage of the responsibility that [DOE] needs to take...."

Any allocation of responsibility that EPA may prepare, such as a non-binding allocation of responsibility, may expose EPA to charges of favoritism, since DOE is a sister federal entity. Discussions were held among the four identified potentially responsible parties (PRPs) regarding how best to conduct an allocation. It was agreed that using a third-party neutral mediator would best serve the interests of the parties and satisfy EPA's desire to maintain neutrality.

Additionally, the private party PRPs have requested that in any mediation performed, that the mediator give consideration and possibly allocate some responsibility to an "orphan". The orphan is B&K Construction Company, which acted as the transporter of the radioactive materials for Cotter Corporation. It has been alleged that B&K actually chose the Site for disposal of the wastes, although there appears to be some conflicting information on this.

Therefore, in order to accomplish the allocation, EPA would envision starting as soon as practicable in order to meet the six-month deadline mentioned above. While this schedule is ambitious, EPA still envisions that the parties would be substantially involved in the process or nearly complete in their efforts by that date.

The process would involve voluntary allocation of liability with the four PRPs, with EPA as a party to represent the "orphan" share previously discussed. An initial meeting is expected, with several additional one-day meetings with all parties in attendance to follow until resolution.

Appropriate shares for costs may include consideration of PRP ability to pay issues, as driven by a range of estimated costs for various likely, but as yet not selected, remedial alternatives. Additional costs or liabilities considerations may include credit for past contributions under the per capita allocation scheme, EPA's orphan share contribution in the form of forgiveness of oversight costs, or other mechanisms or sources that may come forward as the allocation proceeds. EPA would expect that the convening phase of the mediation would resolve many of these issues to further clarify what the parties

expect from the process.

### Contract Requirements

Dynamac Corporation was tasked on March 10, 1997, to provide a professional arbitrator/ allocator/mediator that can provide the services indicated in the previous information and meet the specific requirements contained in the Scope of Work section of this document. Toward that end, Dynamac is soliciting bids to conduct the following work from professional mediators, persons and organizations.

### Scope of Work

#### A. Convening Activities (*PHASE I*)

1. The mediator shall contact key parties for the PRPs as identified by Dynamac Project Manager. The mediator shall discuss the goals and purpose of the proposed mediation process, as well as the technical or substantive issues involved in the allocation process. If initial contacts with the key parties reveal that a mediation process is not feasible, the mediator shall notify Dynamac, explain the difficulties (lack of interest, unequivocal opposition of a key party, disagreement about the definition of the problem, wrong forum or process, etc.) and await the Dynamac Project Manager's decision on whether to proceed with the mediation process.
2. The mediator shall provide oral reports to the Dynamac Project Manager as needed pertaining to the general progress of the convening effort.
3. The mediator shall provide one copy of a draft convening report to the Dynamac Project Manager within five working days of the conclusion of the convening effort. The report shall:
  - a. Summarize the results of the convening contacts, including such items as:
    - (1) Who was contacted, representing what organization, during this period; and
    - (2) Identification and discussion of the issues which the parties agree will be considered as part of the allocation process, and the issues which the parties choose not to have addressed in the allocation process.
  - b. A discussion of the chances of a successful allocation process and the goals and purpose of the process from the viewpoints of the affected parties.
  - c. Recommendation of potential additional parties that should also participate in the

mediation process.

- d. If the mediation process appears to be feasible, the report shall include a design for the process including such things as:
  - (1) The structure and type of meetings between/among the mediator and the affected parties;
  - (2) The expected number, length, location and frequency of meetings;
  - (3) The research, data or information necessary prior to or during the process;
  - (4) The estimated budget for the process as designed and proposed by the mediator; and
  - (5) Whether an orientation session is recommended prior to the first meeting.
  - (6) Commitments from the effected parties to fully participate in the mediation process.
- e. If a consultative process is not recommended, the mediator may suggest other processes that could accomplish the goals of achieving a voluntary allocation agreement.

The Dynamac Project Manager will review the draft convening report and provide comments and revisions as necessary. The mediator will prepare the final report incorporating the Dynamac Project Manager's comments and revisions as appropriate.

The mediator shall distribute three copies of the final report to the Dynamac Project Manager, and one copy to each of the parties interviewed for the report.

- 4. If Dynamac decides to proceed, the mediator shall submit an initial draft of operational ground rules, for approval by Dynamac.
- 5. As a part of the convening effort, the mediator may arrange for and facilitate an initial organizational meeting of the parties to discuss the form of the process and the parties to be involved, to get commitments to go forward from each of the parties, discuss the issues involved, and/or the ground rules for the process.

## B. Mediation Activities

This phase will implement the design of the mediation process as accepted by the Dynamac

Project Manager based upon the final convening report recommendations.

1. At the initial meetings, the mediator shall assist the group in further developing and refining the ground rules or operating procedures of the process.
2. The mediator shall provide a draft agenda to the Dynamac Project Manager for each meeting. The mediator shall distribute the final agenda to the Dynamac Project Manager and to participants in the mediation process.
3. The mediator shall facilitate all plenary, subcommittee and work group sessions. As facilitator, the mediator shall assist participants in articulating their interests, identifying areas of agreement, and developing consensus solutions to the problems that divide them. As facilitator, s/he shall keep the parties talking, listening, and moving (as much as possible) towards the goal of the process.
4. The mediator shall communicate in person, by phone or in writing with process participants to ensure that issues and concerns have been communicated accurately and that all participants are adequately prepared for the next meeting.
5. The mediator will be required to provide draft meeting summaries to the Dynamac Project Officer and the participants. The necessity for and the extent of the summary will be decided between the mediator and the Dynamac Project Manager during an oral briefing following each meetings. The facilitator shall distribute final meeting summaries to the Dynamac Project Officer and participants.
6. The mediator shall provide meeting facilities and support for all meetings. If arrangements must be made for meetings to be held outside of the mediator's facility, Dynamac staff will provide logistical support in obtaining appropriate meeting facilities.
7. The mediator shall furnish a draft report of the mediation process to the Dynamac Project Officer within 15 working days of process completion. The report shall include:
  - a. An executive summary of the process including a brief background, an overview of the issues discussed, and the resolutions of the issues;
  - b. Final meeting summaries with relevant and necessary attachments;
  - c. Relevant substantive correspondence between the mediator and the participants and between the participants (if available to the mediator); and
  - d. A process evaluation by the mediator summarizing the results of the process, analysis of the issues, procedural lessons learned, and recommendations for improvement.

The Dynamac Project Officer will review the draft final report and provide comments and revisions as necessary and appropriate. The mediator shall prepare the final report incorporating the comments and revisions as appropriate to maintaining the third-party neutral status of the mediator. The mediator shall provide three copies of the final report to the Dynamac Project Manager and one copy to each party involved in the process.

The Conflict of Interest provisions set forth in the prime contract are hereby made apart of this consultant agreement.

#### **H-2 ORGANIZATIONAL CONFLICTS OF INTEREST (EPAAR 1552.209-71) (MAY 1994)**

- (a) The Subcontractor warrants that, to the best of the Subcontractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organization conflict of interest, as defined in FAR Subpart 9.5, or that the Subcontractor has disclosed all such relevant information.
- (b) Prior to commencement of any work, the Subcontractor agrees to notify the Dynamac Contracting Officer immediately that, to the best of its knowledge and belief, no actual or potential conflict of interest exists or to identify to the Dynamac Contracting Officer any actual or potential conflict of interest the firm may have. In emergency situations, however, work may begin but notification shall be made within three (3) working days.
- (c) The Subcontractor agrees that if an actual or potential organizational conflict of interest is identified during performance, the Subcontractor will immediately make a full disclosure in writing to the Dynamac Contracting Officer. This disclosure shall include a description of actions which the Subcontractor has taken or proposes to take, after consultation with Dynamac's Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict of interest. The Subcontractor shall continue performance until notified by Dynamac's Contracting Officer of any contrary action to be taken.
- (d) Remedies. Dynamac may terminate this Subcontract or any work assignment issued hereunder for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Subcontractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose it or misrepresented relevant information to Dynamac's Contracting Officer, Dynamac may terminate the Subcontract for default, debar the Subcontractor from Dynamac subcontracting, or pursue other remedies as may be permitted by law or this Subcontract.
- (e) The Subcontractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (e).

#### **H-3 NOTIFICATION OF CONFLICTS OF INTEREST REGARDING PERSONNEL (EPAAR 1552.209-73) (MAY 1994)**

- (a) In addition to the requirements of the subcontract clause entitled "Organizational Conflicts of Interest," the following provisions with regard to employee personnel performing under this Subcontract shall apply until the earlier of the following two dates: the termination date of the affected employee(s) or the expiration date of the Subcontract.
- (b) The Subcontractor agrees to notify immediately the Dynamac Project Manager and the Dynamac Contracting Officer of (1) any actual or potential personal conflict of interest with regard to any of its employees working on or having access to information regarding this Subcontract, or (2) any such conflicts concerning lower-tier subcontractor employees or consultants working on or having access to information regarding this subcontract, when such conflicts have been reported to the Subcontractor. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing the subcontract work.
- (c) The Subcontractor agrees to notify the Dynamac Project Manager and Dynamac Contracting Officer prior to incurring costs for that employee's work when an employee may have a personal conflict of interest. In the event that the personal conflict of interest does not become known until after performance on the Subcontract begins, the Subcontractor shall immediately notify Dynamac's Contracting Officer of the personal conflict of interest. The Subcontractor shall continue performance of this subcontract until notified by Dynamac's Contracting Officer of the appropriate action to be taken.
- (d) The Subcontractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (d).

## STATEMENT OF WORK

### Site Background

West Lake Landfill (the "Site), Operable Unit No. 1, involves a remedial investigation/feasibility study (RI/FS) being performed by Cotter Corporation (N.S.L.), Laidlaw Waste Systems (Bridgeton), Inc., Rock Road Industries, Inc., and the U. S. Department of Energy.

In 1966, the Atomic Energy Commission (AEC) sold 8,700 tons of leached barium sulfate, together with other radioactive residues, to Continental Mining and Milling Company (Continental Mining). The radioactive residues were generated as by-products of uranium processing performed by the AEC's contractor. These processing residues were stored at the AEC's St. Louis Airport Storage Site. Continental Mining moved the radioactive residues to its facility at 9200 Latty Avenue in Hazelwood, Missouri. Eventually, Cotter purchased the radioactive residues and shipped all but the 8,700 tons of leached barium sulfate to its processing facility in Colorado.

In 1973, approximately 8,700 tons of radioactively contaminated leached barium sulfate residues were mixed with approximately 39,000 tons of soil, and the entire amount was disposed of in two areas of the Site. This material resulted from decontamination efforts undertaken by Cotter at 9200 Latty Avenue where the residues had been stored. Studies have indicated that these two areas of the landfill are contaminated with uranium-238, uranium-235, thorium-230, and radium-226. In addition to the radioactive materials in the landfill, groundwater at the Site is also contaminated with radioactive materials as well as other hazardous substances.

In 1993, EPA entered into an Administrative Order on Consent (AOC) for the performance of a RI/FS at the Site. As indicated above, Cotter Corporation, Laidlaw Waste Systems, Inc., Rock Road Industries, Inc., and the U. S. Department of Energy were signatories to this AOC.

### Mediation Support

To date, the four respondents to the AOC have shared the cost of work equally. While this allocation has worked for the RI/FS phase of the work, the upcoming remedial design/remedial action (RD/RA) will be substantially more costly, and some of the parties may have difficulty paying a 25% share. The RI/FS is still underway, so no Record of Decision (ROD) has been issued and it is not expected that a ROD will be issued before this mediation process is complete.

Despite the absence of projected remedial costs, both the PRPs and DOE are willing to proceed with a mediation effort. In particular, DOE seeks a greater degree of certainty

in its budget planning process, and along with the PRPs may see mediation as an opportunity to adopt a more equitable basis for liability than the current per capita scheme.

On December 5, 1996, a meeting of the St. Louis Site Task Force was conducted in St. Louis, Missouri. Those attending included DOE Assistant Secretary Thomas Grumbley, EPA Regional Administrator Dennis Gramms, as well as various other representatives of DOE, EPA, the State of Missouri, the City and County of St. Louis and staffers from interested Congressional offices in the state and affected district. At this meeting, DOE Assistant Secretary Grumbley announced that with regard to West Lake Landfill OU-1, EPA would "allocate the responsibility at the site as best as it can over the next six months or so, so that they can tell us what percentage of the responsibility that [DOE] needs to take...."

Any allocation of responsibility that EPA may prepare, such as a non-binding allocation of responsibility, may expose EPA to charges of favoritism, since DOE is a sister federal entity. Discussions were held among the four identified potentially responsible parties (PRPs) regarding how best to conduct an allocation. It was agreed that using a third-party neutral mediator would best serve the interests of the parties and satisfy EPA's desire to maintain neutrality.

Additionally, the private party PRPs have requested that in any mediation performed, that the mediator give consideration and possibly allocate some responsibility to an "orphan". The orphan is B&K Construction Company, which acted as the transporter of the radioactive materials for Cotter Corporation. It has been alleged that B&K actually chose the Site for disposal of the wastes, although there appears to be some conflicting information on this.

Therefore, in order to accomplish the allocation, EPA would envision starting as soon as practicable in order to meet the six-month deadline mentioned above. While this schedule is ambitious, EPA still envisions that the parties would be substantially involved in the process or nearly complete in their efforts by that date.

The process would involve voluntary allocation of liability with the four PRPs, with EPA as a party to represent the "orphan" share previously discussed. An initial meeting is expected, with several additional one-day meetings with all parties in attendance to follow until resolution.

Appropriate shares for costs may include consideration of PRP ability to pay issues, as driven by a range of estimated costs for various likely, but as yet not selected, remedial alternatives. Additional costs or liabilities considerations may include credit for past contributions under the per capita allocation scheme, EPA's orphan share contribution in the form of forgiveness of oversight costs, or other mechanisms or sources that may come forward as the allocation proceeds. EPA would expect that the convening phase of the mediation would resolve many of these issues to further clarify what the parties



expect from the process.

### Contract Requirements

Dynamac Corporation was tasked on March 10, 1997, to provide a professional arbitrator/ allocator/mediator that can provide the services indicated in the previous information and meet the specific requirements contained in the Scope of Work section of this document. Toward that end, Dynamac is soliciting bids to conduct the following work from professional mediators, persons and organizations.

### Scope of Work

#### A. Convening Activities (*PHASE I*)

1. The mediator shall contact key parties for the PRPs as identified by Dynamac Project Manager. The mediator shall discuss the goals and purpose of the proposed mediation process, as well as the technical or substantive issues involved in the allocation process. If initial contacts with the key parties reveal that a mediation process is not feasible, the mediator shall notify Dynamac, explain the difficulties (lack of interest, unequivocal opposition of a key party, disagreement about the definition of the problem, wrong forum or process, etc.) and await the Dynamac Project Manager's decision on whether to proceed with the mediation process.
2. The mediator shall provide oral reports to the Dynamac Project Manager as needed pertaining to the general progress of the convening effort.
3. The mediator shall provide one copy of a draft convening report to the Dynamac Project Manager within five working days of the conclusion of the convening effort. The report shall:
  - a. Summarize the results of the convening contacts, including such items as:
    - (1) Who was contacted, representing what organization, during this period; and
    - (2) Identification and discussion of the issues which the parties agree will be considered as part of the allocation process, and the issues which the parties choose not to have addressed in the allocation process.
  - b. A discussion of the chances of a successful allocation process and the goals and purpose of the process from the viewpoints of the affected parties.
  - c. Recommendation of potential additional parties that should also participate in the

mediation process.

- d. If the mediation process appears to be feasible, the report shall include a design for the process including such things as:
  - (1) The structure and type of meetings between/among the mediator and the affected parties;
  - (2) The expected number, length, location and frequency of meetings;
  - (3) The research, data or information necessary prior to or during the process;
  - (4) The estimated budget for the process as designed and proposed by the mediator; and
  - (5) Whether an orientation session is recommended prior to the first meeting.
  - (6) Commitments from the effected parties to fully participate in the mediation process.
- e. If a consultative process is not recommended, the mediator may suggest other processes that could accomplish the goals of achieving a voluntary allocation agreement.

The Dynamac Project Manager will review the draft convening report and provide comments and revisions as necessary. The mediator will prepare the final report incorporating the Dynamac Project Manager's comments and revisions as appropriate.

The mediator shall distribute three copies of the final report to the Dynamac Project Manager, and one copy to each of the parties interviewed for the report.

4. If Dynamac decides to proceed, the mediator shall submit an initial draft of operational ground rules, for approval by Dynamac.
5. As a part of the convening effort, the mediator may arrange for and facilitate an initial organizational meeting of the parties to discuss the form of the process and the parties to be involved, to get commitments to go forward from each of the parties, discuss the issues involved, and/or the ground rules for the process.

## B. Mediation Activities

This phase will implement the design of the mediation process as accepted by the Dynamac

Project Manager based upon the final convening report recommendations.

1. At the initial meetings, the mediator shall assist the group in further developing and refining the ground rules or operating procedures of the process.
2. The mediator shall provide a draft agenda to the Dynamac Project Manager for each meeting. The mediator shall distribute the final agenda to the Dynamac Project Manager and to participants in the mediation process.
3. The mediator shall facilitate all plenary, subcommittee and work group sessions. As facilitator, the mediator shall assist participants in articulating their interests, identifying areas of agreement, and developing consensus solutions to the problems that divide them. As facilitator, s/he shall keep the parties talking, listening, and moving (as much as possible) towards the goal of the process.
4. The mediator shall communicate in person, by phone or in writing with process participants to ensure that issues and concerns have been communicated accurately and that all participants are adequately prepared for the next meeting.
5. The mediator will be required to provide draft meeting summaries to the Dynamac Project Officer and the participants. The necessity for and the extent of the summary will be decided between the mediator and the Dynamac Project Manager during an oral briefing following each meetings. The facilitator shall distribute final meeting summaries to the Dynamac Project Officer and participants.
6. The mediator shall provide meeting facilities and support for all meetings. If arrangements must be made for meetings to be held outside of the mediator's facility, Dynamac staff will provide logistical support in obtaining appropriate meeting facilities.
7. The mediator shall furnish a draft report of the mediation process to the Dynamac Project Officer within 15 working days of process completion. The report shall include:
  - a. An executive summary of the process including a brief background, an overview of the issues discussed, and the resolutions of the issues;
  - b. Final meeting summaries with relevant and necessary attachments;
  - c. Relevant substantive correspondence between the mediator and the participants and between the participants (if available to the mediator); and
  - d. A process evaluation by the mediator summarizing the results of the process, analysis of the issues, procedural lessons learned, and recommendations for improvement.

The Dynamac Project Officer will review the draft final report and provide comments and revisions as necessary and appropriate. The mediator shall prepare the final report incorporating the comments and revisions as appropriate to maintaining the third-party neutral status of the mediator. The mediator shall provide three copies of the final report to the Dynamac Project Manager and one copy to each party involved in the process.

**PRICE NEGOTIATION MEMORANDUM**

PRIME CONTRACT NUMBER: 68-W4-0039

PROJECT NAME: Alternative Dispute Resolution for the West Lake Landfill

EPA WORK ASSIGNMENT MANAGER: Mr. Steve Kinser

---

**DESCRIPTION OF REQUIREMENT:**

**A. Convening Activities (PHASE I)**

1. The allocator shall contact key parties for the PRPs as identified by Dynamac Project Manager. The allocator shall discuss the goals and purpose of the proposed allocation process, as well as the technical or substantive issues involved in the allocation process. If initial contacts with the key parties reveal that an allocation process is not feasible, the allocator shall notify Dynamac, explain the difficulties (lack of interest, unequivocal opposition of a key party, disagreement about the definition of the problem, wrong forum or process, etc.) and await the Dynamac Project Manager's decision on whether to proceed with the allocation process.
2. The allocator shall provide oral reports as needed to the Dynamac Project Manager as needed pertaining to the general progress of the convening effort.
3. The allocator shall provide one copy of a draft convening report to the Dynamac Project Manager within five working days of the conclusion of the convening effort. The report shall:
  - a. Summarize the results of the convening contacts, including such items as:
    - (1) Who was contacted, representing what organization, during this period; and
    - (2) Identification and discussion of the issues which the parties agree will be considered as part of the allocation process, and the issues which the parties choose not to have addressed in the allocation process.
  - b. A discussion of the chances of a successful allocation process and the goals and purpose of the process from the viewpoints of the affected parties.
  - c. Recommendation of potential additional parties that should also participate in the consultative process.

**PRICE NEGOTIATION MEMORANDUM**

PRIME CONTRACT NUMBER: 68-W4-0039

PROJECT NAME: Alternative Dispute Resolution for the West Lake Landfill

EPA WORK ASSIGNMENT MANAGER: Mr. Steve Kinser

---

- d. If the allocation process appears to be feasible, the report shall include a design for the process including such things as:
- (1) The structure and type of meetings between/among the allocator and the affected parties;
  - (2) The expected number, length, location and frequency of meetings;
  - (3) The research, data or information necessary prior to or during the process;
  - (4) The estimated budget for the process as designed and proposed by the allocator; and
  - (5) Whether an orientation session is recommended prior to the first meeting.
  - (6) Commitments from the effected parties to fully participate in the allocation process.
- e. If a consultative process is not recommended, the allocator may suggest other processes that could accomplish the goals of achieving a voluntary allocation agreement.

The Dynamac Project Manager will review the draft convening report and provide comments and revisions as necessary. The allocator will prepare the final report incorporating the Dynamac Project Manager's comments and revisions as appropriate.

The allocator shall distribute three copies of the final report to the Dynamac Project Manager, and one copy to each of the parties interviewed for the report.

4. If Dynamac decides to proceed, the allocator shall submit an initial draft of operational ground rules, for approval by Dynamac.

**PRICE NEGOTIATION MEMORANDUM**

PRIME CONTRACT NUMBER: 68-W4-0039

PROJECT NAME: Alternative Dispute Resolution for the West Lake Landfill

EPA WORK ASSIGNMENT MANAGER: Mr. Steve Kinser

- 
5. As a part of the convening effort, the allocator may arrange for and facilitate an initial organizational meeting of the parties to discuss the form of the process and the parties to be involved, to get commitments to go forward from each of the parties, discuss the issues involved, and/or the ground rules for the process.

**SOURCE SELECTION:** Competitive

Dynamac submitted requests for proposals (RFPs) to eleven perspective Bidders (List Attached) on March 26, 1997. Two of the eleven perspective Bidders responded to the RFP, JAMS/Endispute of Chicago, Illinois and Clean Sites of Alexandria, Virginia. On May 9, 1997, the selection committee convened to review the two proposals. After careful analysis of the two proposals, JAMS/Endispute was selected to mediate the voluntary allocation process as defined in the Statement of Work. A detailed outline of the selection process is attached to this document.

**COST ANALYSIS**

Redacted

**DATE:** April 10, 1997  
**TO:** File  
**FROM:** Alan Cummings  
**SUBJECT:** Mediator Estimate

---

FOIA Exemption 4

Based on information made available from experienced ADR persons on the mediator selection team (Dave Dekkar, Esq., and Ron Harris, Esq.), estimated costs for completion of the convening process described in the SOW are as follows:

Estimated time to complete convening process or determine that allocation is not feasible at this time is 30 Hours.

Estimated cost per hour for a mediator for multiple PRP mediation is approximately **Redacted** per hour.

Estimated cost of two days in St. Louis, MO, along with travel costs is **Redacted**

Estimated direct labor costs =

Total estimated convening costs

**Redacted**



**DATE:** May 16, 1997  
**TO:** Dave Biver, Vice-President, Contracts  
**FROM:** Alan Cummings  
**SUBJECT:** Mediator Selection Recommendations  
Work Assignment, C07023

---

On May 9, 1997, at 1335 Hours CDT, the mediator selection committee convened via conference telephone call to select a mediator to conduct the voluntary allocation process defined in the Statement of Work for Work Assignment C07023. The selection committee consisted of:

Alan Cummings, Dynamac, work assignment project manager;

Ron Harris, Dynamac, attorney with ADR experience; and

Dave Dekkar, Arent Fox Kintner Plotkin & Kahn, consulting attorney with extensive ADR experience.

The selection committee reviewed two proposals that were received by Dynamac on April 24, 1997, in response to a solicitation issued by Dynamac and forwarded to members of the selection committee on April 25, 1997. Proposals were submitted by:

J.A.M.S/Endispute, naming William Hartgering as the mediator candidate; and

Clean Sites, naming Kathleen Whitby as the mediator candidate.

The selection committee evaluated each proposal in three areas:

- Technical qualifications;
- Convening plan content and specificity; and
- Proposed budgets for the convening process.

#### **Technical Qualifications**

In the areas of education, training, and certifications, both proposed mediators met the evaluation criteria in that both are attorneys with litigation experience, both are bar members, both are recognized as mediators and arbitrators by professional organizations.

Although information contained in the proposals indicated that the Clean Sites candidate had more experience in dealing with Superfund issues, the Endispute candidate clearly had more ADR experience in successfully dealing with complex mediation/arbitration issues, many of which involved

Superfund allocations. This experience includes a past and current landfill mediation effort. In the Committee's view, a basic knowledge of Superfund issues is critical, but the success of the mediation will ultimately depend more upon the selected individual's skill and experience as a mediator, than upon the depth of the individual's knowledge of Superfund Issues.

Clean Sites proposed a team approach to mediation, while Endispute proposed a single mediator with logistic support provided by Endispute. The selection committee agreed that a team approach would likely be less effective than a single mediator. Slight delays that may be caused by scheduling problems with a single mediator will likely be more favorable than having the parties in the mediation process deal with more than one mediator at different stages in the process. For reasons of consistency and maintenance of the trust developed by the mediator in the early mediation stages, the selection committee favored the single mediator approach.

In the areas of Conflict of Interest and availability, the selection committee agreed that both proposals were acceptable.

Summary: In the area of Technical Qualifications, the selection committee slightly favored the Endispute proposal based primarily on the overall ADR experience of the proposed mediator and the single mediator approach.

### **Convening Plan**

The selection committee compared the proposed convening plans with the requirements for the convening process contained in the Statement of Work (SOW) in the mediation solicitation.

The convening plan proposed by Endispute precisely followed the solicitation SOW. The plan clearly proposed three parts to completing the convening phase:

1. Introductory telephone conferences;
2. Joint preliminary meeting; and
3. Follow-up individual PRP meetings.

The plan contained specific objectives for each part and an estimated effort to complete each part. The proposal specified that at the end of this process the PRPs would have a process in place for mediation efforts or would have decided that the matter is not yet ready to mediate. The proposed procedure clearly recognizes that this mediation process may not proceed past the convening stage at this time.

The convening plan proposed by Clean Sites contained an overview of the convening process, but did not tie the objectives into an action plan. Although there are usually several consecutive and concurrent activities associated with this activity, Clean Sites proposed project approach was not clear to the selection committee. It contemplated many possible scenarios that are beyond the Convening Stage and did not contain any milestones to evaluate progress and likelihood of success that were clear to the selection committee. The plan did indicate that parties involved in the process might decide that this process may not be desirable at all or not desirable at this time.

Summary: The selection committee favored the convening plan submitted by Endispute. The plan was divided into easily understandable phases, contained clear and specific objectives for each phase, and an estimated effort for each phase.

### **Proposed Budget**

The selection committee reviewed the proposed budgets from two perspectives; 1) As compared to the effort estimated in the proposed convening plan, and 2) as compared to the other proposal.

The Endispute proposal contained hourly rate information for the number of PRPs identified in the Background Section of the solicitation. Utilizing the effort estimates contained in the convening plan, an estimated cost range was easily determined. Support for the mediation efforts was provided as a fixed percentage of the fee for services. The proposal did not contain an estimate of direct charges for travel associated with the St. Louis meeting. The top range of effort specified in the cost estimate was 28 hours professional LOE.

The Clean Site proposal contained a matrix indicating tasks and professional category, and the estimated effort for each. The selection committee could not clearly identify the tasks in the matrix based on the proposed convening plan. Although one task was identified as Convening, the overall cost estimate for the convening process was based on the total effort identified in the matrix. The selection committee could not break out level of effort to phases of the convening process. The total professional LOE estimated in the Clean Sites budget was 164 hours, with 32 hours of clerical support.

Comparatively, the Endispute budget was substantially less for a "worst-case scenario" than the Clean Sites budget.

Summary: The selection committee favored the budget submitted by Endispute. The budget was clearly linked to specific action plan phases. The Endispute budget was substantially less than that submitted by Clean Sites. The selection committee concluded, based on plan specificity, that the costs proposed by Endispute for the convening process were reasonable for the proposed plan (not artificially low when compared to the plan).

### **Conclusions and Recommendations**

Based on the conclusions contained in the summaries for each evaluation section, the selection committee recommends the selection of the mediator proposed in the Endispute proposal. The committee favored the Endispute proposal in each of the three evaluation areas for the reasons specified.

ADR Associates  
1630 S. 8th St.  
Rogers, AR  
72756

Telephone: (501) 621-5455

American Arbitration Association  
13455 Noel Road, Ste. 1750  
Dallas, TX  
75240

Telephone: (405) 235-4443

Clean Sites, Inc.  
53 W. Jackson Boulevard  
Chicago, IL  
60604

Telephone: (312) 554-0900

Endispute, Inc.  
70 W. Madison Street  
Chicago, IL  
60602

Telephone: (312) 739-0900

Indiana Environmental Institute, Inc.  
150 W. Market  
Indianapolis, IN  
46204

Telephone: (317) 635-6018

Institute for Environmental Assessment  
7877 L Street  
Omaha, NE  
68127

Telephone: (402) 339-6240

Keystone Center  
199 S. Herlong Avenue  
Rock Hill, SC  
29732

Telephone: (803) 324-1800

The Mediation Institute  
7216 Walnut Cr. Dr.,  
Oklahoma City, OK  
73142

Telephone: (405) 528-1121

Resolve  
401 Ohio  
Terre Haute, IN  
47801

Telephone: (812) 231-1789

Resource Associates  
P. O. Box 1505  
Arlington Heights, IL

Telephone: (847) 255-1400

Western Network  
616 Don Gaspar Avenue  
Santa Fe, NM  
87501

Telephone: (505) 982-9805



Innovative Solutions To Conflict

---

222 S. Riverside Plaza • Suite 1850 • Chicago, IL 60606 • 312-655-0555 • Fax 312-655-0644

**PROPOSAL FOR**  
**COST ALLOCATION AND MEDIATION SERVICES**  
**WILLIAM E. HARTGERING, MEDIATOR**

**WEST LAKE LANDFILL SITE**  
**ST. LOUIS, MISSOURI**

**JAMS/ENDISPUTE**  
**222 SOUTH RIVERSIDE PLAZA SUITE 1850**  
**CHICAGO, ILLINOIS 60606**  
  
**CONTACT: WILLIAM HARTGERING 312-655-9197**

---

## **Introduction**

On behalf of JAMS/ENDISPUTE, we appreciate the opportunity to respond to your request for information. We propose William Hartgering, now an independent contractor from our Chicago office, for your consideration. Included below are responses to the 6 areas outlined in Dynamic Corporation's April 14 letter (Dynamic RFI):

- 1-2. Qualifications, Experience & Training
3. Process Description (including estimated time for Phase I)
4. Proposed Hourly Rate
5. Three References, and
6. Conflict of Interest/Availability.

## **I & II. "Academic" Qualifications, Relevant Experience and Specialized Training**

**A. Relevant Experience.** As reflected in the attached

- "Selected Environmental and Related Experience" (Ex. 1),
- "Representative Complex, Multiparty, Highstakes Matters" (Ex. 2),
- general vitae (Ex. 3), and his
- "Representative Commercial Mediation and Arbitration References" (Ex. 4),

Bill has been a full time mediator since 1981. Having established the Chicago JAMS/ENDISPUTE office in 1982, his mediation experience includes hundreds of complex, multiparty matters in over 40 states and foreign countries involving hundreds of major corporations and 8 different federal agencies.

Prior to 1981, he practiced with multicity law firms, concentrating on commercial, employment, real estate and insurance related litigation, including clients with environmental issues. He received his JD from Northwestern University School of Law, Chicago, Illinois, where he was appointed to the *Law Review*.

The "Environmental and Related Experience" (Ex. 1) includes brief descriptions of numerous representative matters. We would enjoy the opportunity to provide additional information on any of them. A recent environmental mediation which might be of particular interest to you in making your selection of a mediator here. It involved a:

- ***Chemical/Pesticide Plant Superfund Site, 5 separate areas, \$40-70M Allocation.*** 50+ year old Chemical and Pesticide Plant site, 5 separate areas involving different combinations of 9 corporate parties (and the EPA as a participant) and an estimated \$40-70M clean up. After 6 years of bitter litigation, there were widely divergent views on key

issues including “Aceto,” alter ego and successor liability, relevancy of volumetric data, substantial “orphan share” and toxicity issues.

Chosen as allocation consultant to work with a former judge, Bill ended up working as a co-mediator. Each party submitted responsive memoranda and extensive exhibits and presented 4 days of argument. The mediators met with the parties separately on a site by site basis. The matter was resolved within about 4 weeks of the start of the joint meetings with the parties.

PRPs with literally hundreds of complex Superfund site disputes described this as one of the most complex matters they had seen.

Also potentially relevant to your selection process is a matter not described in the material:

- ***Pending Landfill Superfund Site Allocation.*** Bill was recently chosen as the mediator/allocator for a site involving Superfund dollars in southern Wisconsin after a lengthy, apparently nationwide search initiated by the federal court which suggested mediation. It will be mediated later this spring. It involves the EPA and 5 PRPs.

The mediation schedule has not been confirmed, but I do not believe it will pose a problem in your matter if Bill were to be chosen.

- ***Related Allocation Experience.*** Exhibits 2 and 3 also describe numerous complex, multiparty, high stakes matters which similarly involved difficult allocations of liability and damages among numerous parties. Due to focused preliminary meetings and managed, issue related joint sessions, most of these matters were completed with a week of the opening of the joint mediation sessions.

- ***Mediations involving Federal Agencies.*** Matters involving Federal agencies involve unique issues, interests and procedural considerations. Bill has successfully mediated matters involving 8 separate agencies, and has recently been chosen for a matter involving the DOE in Louisiana after being proposed by the other side (see below). Many matters involved agencies who were unfamiliar with mediation, particularly in large, multi issue matters. Each involved 2 to 12+ additional private parties, several of which were represented by counsel who had mediated with Bill in previous complex matters.

## **B. Specialized Training.**

- ***Co-Trainer for Basic and Advanced Environmental ADR Training.*** Bill recently completed service as a co-trainer for both a basic and an advanced ADR (Alternative Dispute Resolution) workshop for Region V of the EPA, having been invited by RESOLVE as part of their contract to provide ADR training to the EPA regions.



- ***Co-Trainer for ADR and Advanced Negotiation for the Oregon Department of Natural Resources and the Attorney General.***

- ***Advanced ADR Workshops and Presentations.*** Bill has both lead and participated in dozens of “Advanced Mediation” and Group Leadership Training, Advanced ADR workshops and presentations. He has served as

- Adjunct Faculty of the Northwestern University Kellogg School of Business and the School of Law (teaching negotiation and ADR)
- Faculty for the National Institute for Trial Advocacy (NITA-Negotiation Training), and
- Sole leader for Administrative Conference of the United States (ACUS) ADR workshop for ADR liaisons for most of the major federal agencies.

### **III. Brief Description of Process**

You have asked for a “brief” description of how Bill might proceed as the mediator, including an estimate of the hours for Phase I. Bill describes the Mediation in 3 Phases: Convening, Completing the “Information Exchange,” and the Separate & Joint Meetings.

#### **A. Phase I, the “Convening Phase.”**

We have a limited amount of information at this point, particularly with reference to the level of the parties’ interest in and experience with mediation. Based on an assumption that the parties here may not be as far along on their decision to mediate as they generally are in his cases, Bill would propose a simple 3 part convening process. Let us note at the outset that this may be more “process” than necessary, and may be able to be shortened.

The parties would commit only to Phase I which would include:

- (1) Introductory phone conferences,
- (2) A preliminary meeting of all parties and the EPA in St. Louis, immediately followed, if necessary, by
- (3) Individual meetings with the Mediator to determine if they want to proceed, and if so, then agree on the parameters of how they would like to proceed.

An optional, brief informational site visit could precede the preliminary meeting.

***Part 1. Introductory Telephone Conferences (or meetings if geographically efficient) with each party and the EPA.*** The limited purpose would be for the Mediator to obtain preliminary input regarding each party’s relative interest in the mediation, to go over the agenda for the joint preliminary meeting described below, determine and circulate who would attend the meeting from each party, and answer any questions about the process.

**Part 2. Joint Preliminary Meeting in St. Louis.** The agenda would include

(a) General items:

- Defining the Mediation Process: what it is and is not
- Clarifying confidentiality and other ground rules including the role of questions by the participants of each other and by the mediator
- Identifying key issues which would organize the mediation
- Structuring the “information exchange” for purposes of the mediation:
  - what documents and information might still need to be exchanged,
  - what protection can assure that all key documents have been exchanged.
- What would need to be provided to the Mediator and exchanged among all parties prior to the mediation, including a *page limited* memorandum (the Memo) discussing the key issues in the case to be prepared by each party
- Possible dates for the completion of the information exchange, the exchange of the pre mediation Memo, and the mediation itself
- Determine who will need to attend the mediation from each party
- Determine whether additional parties need to participate
- Answer questions about the draft “Mediation Agreement” (circulated prior to the meeting)
- Any other general items suggested by the parties, and

(b) more specific items, to determine, or find out how to determine, *with as much specificity as possible*, the:

- Cost estimates for each of the various remedies proposed
- Dollar value of possible per party “credits” earned for past contributions under the per capita allocation scheme,
- Dollar value of EPA’s oversight and other costs which might be applied to the orphan share, and
- Any other items which relate to the eventual amount that needs to be allocated.

**Part 3. Follow-up, individual meetings with the 4 PRPs and the EPA.**

Based on our limited knowledge on the level of the parties interest in the mediation, it is difficult to determine whether process consensus might be reached at the joint meeting or whether certain items might have to be worked out in separate, individual follow-up meetings. Bill would anticipate that the parties would either have a process in place at the end of this phase or decide the matter is not yet ready to mediate.

**B. Estimated time for Phase I.**

**1. Introductory Phone Conferences.**

Review materials and conduct 5 separate conferences, revise agenda for preliminary meeting,

.5-1 day

**2+3. Preliminary meeting in St. Louis**

Travel to St. Louis, conduct brief afternoon site visit (optional), meet jointly with parties the next morning, follow-up individual meetings with parties to confirm mediation (meetings would begin after at the close of the joint meeting and presumably be concluded by the end of the day).

1.5 days

General: Preparation, reports to parties and conferences with Dynamic, possible follow-up calls to parties for report after phase I

.5-1 day

estimate (Phase I): 2.5-3.5 days

**C. Phase II: Complete the Information Exchange**

One of the key tasks of Phase I is to agree on what needs to be exchanged before the mediation. The parties cannot make the necessary difficult business decisions on allocation and the mediator cannot be effective unless all have access to the generally limited amount of data. Phase I will set up a schedule to complete the information exchange. Bill often serves as an informal discovery master during this stage to help keep the matter on schedule and help resolve any issues which might arise.

**D. Phase III: The Mediation.**

Bill generally separates this phase into 2 parts: a separate meeting before the mediation and the joint mediation itself.

**A. Separate Meeting.** Bill's practice is to have a separate meeting with each party after he reads the material exchanged, but before the mediation. The purpose of this meeting is not to argue the case. That needs to be done with all present. Rather, it is to identify the key barriers to settlement, the key issues to each party, including political or business issues often not included in the Memo, and for Bill to raise key issues privately which he plans to raise when all parties are together.

**B. Joint Session.** Bill's practice is to generally avoid opening statements (it is assumed that all have read the Memo), and to organize the joint session around a point by point discussion of each of the key issues identified in the Memo. Participants, particularly decision makers, are encouraged to ask questions, as long as it is clear they do not know the answer. No one wants to submit their client to a deposition during the mediation. The intent is to get information, not depose any participant.

#### **IV. Proposed Hourly Rate.**

# Redacted

be divided equally among the parties. This fee covers the JAMS/ENDISPUTE staff role in scheduling meetings, document handling (agreements and/memoranda or briefs) copying, faxing, postage, telephone calls (except those involving an outside conference operator, which are billed at cost), conference rooms at a JAMS/ENDISPUTE office, and administrative and clerical support.

#### **V. References.**

You have asked for 3 references. Assuming that one can always find one satisfied party to a mediation, we include 4 representative PRP counsel (small, 2 “hard to define” and large) and an “active observer” from the Chemical/Pesticide Plant allocation described above.

- (1) An EPA lawyer representative who observed the mediation from a “largely” neutral perspective. The EPA was not a party to that allocation.  
Charles Mikalin, EPA Region IV, Atlanta Georgia (404-562-9575)
- (2) Lead counsel for the largest PRP,  
Charles Perry, Hunton & Williams, Atlanta Georgia (404-888-4014)
- (3,4) Lead outside counsel for two “hard to define” PRPs:  
David Nash, Thompson Hine & Florey, Cleveland, Ohio (216-566-5774), and  
Ray Fay, Petree Stockton & Robinson, Charlotte NC (704-338-5086)
- (5) Lead inside counsel for one of the smaller PRPs on that project,  
Lowell Martin, Morgan, Lewis & Bockius, Washington, DC (202-467-7000)

We also include one of the outside counsel for a corporate PRP who just selected Bill as the mediator in a Wisconsin Superfund case after a lengthy and an apparently broad geographic mediator search. That matter which also involves the EPA (and a city, a township and a second large corporation). Robert Slobig, Torshen Spryer & Gamisa (312-372-9282).

Finally, also enclosed is a list of Bill’s “Representative Commercial Mediation and Arbitration References” (Ex. 4). The list includes 200+ references from some 30 states and 60 cities. We include it on the assumption that you may know one of the firms or counsel, and that the most thorough reference comes from someone that you know, even if it does not directly involve a Superfund matter.

## **VI. Conflict of Interest/Availability.**

**A. No Conflict of Interest.** Bill has served in a neutral capacity as a mediator, arbitrator over the last 16 years. He has no conflicts with any of the parties involved here.

As indicated above, he was honored to be asked to participate in two, half day basic and advanced ADR training at the EPA in Chicago. We assume Bill was asked to participate as one of the most experienced mediators in the region to assist the Washington DC based RESOLVE training group. He had not worked with RESOLVE previously.

Also, as referenced above, on April 22 Bill spoke with outside counsel for Morton International and counsel at DOE informing him that he had been chosen for a complex, very high stakes 2 party mediation involving a Strategic Petroleum Reserve in Louisiana. We do not expect that matter will interfere with this one.

We do anticipate that Bill will have mediated with one or more of the counsel in this matter. One or more of the firms here might appear on Bills (Ex. 4), but we have not seen a service list. Most of his multiparty matters involve one or more firms or parties who have mediated with him before.

**B. Availability.** We have appreciated the opportunity to respond to your RFI in some detail. Bill is very interested in serving as the mediator "throughout the complete period of performance" indicated in the Dynamic RFI. Given the busy nature of his schedule, and the busy schedule of all parties and counsel in this case, it is difficult to predict precisely when, if chosen, Bill might be able to commence Phase I.

Like most active, full time mediators who do not also practice law or another profession, Bill's policy is to grant parties mediation dates on a first come first serve basis. In response to the availability question in the Dynamic RFI, assuming that your selection will not be completed until May, as of April 23, Bill could commence work on Phase I on May 5 and 6.

Obviously, the earlier you can decide, the easier it will be for Bill or any other active mediator to confirm the dates for Phase I. We hope to be in a position "to have such a problem." St. Louis is less than an hour from Chicago and there are many flights daily. While as in most cases setting mutually convenient dates is difficult on short notice with 5 sets of busy people, at this point we do not anticipate a scheduling problem.

Questions should be directed to Bill directly at 312-655-9197.

We look forward to an opportunity to work with you.



Innovative Solutions To Conflict

222 S. Riverside Plaza • Suite 1850 • Chicago, IL 60606 • 312-655-0555 • Fax 312-655-0644

## WILLIAM E. HARTGERING

### SELECTED ENVIRONMENTAL & RELATED EXPERIENCE

#### Court Appointments

- Appointed, with the agreement of all parties, Special Master, Mediator or Referee by 9 federal or state courts: Connecticut, New York, Florida, Illinois, Indiana, Michigan, Missouri, Virginia & Wisconsin.

#### Superfund

- *Pesticide Site/Allocation.* 50+ year old Pesticide Plant site, 5 separate areas involving different combinations of the 9 parties (and the US Government as a participant) involved in the estimated \$40-70M clean up. After 6 years of bitter litigation, there were widely divergent views on key issues including "Aceto," alter ego and successor liability, relevancy of volumetric data, substantial "orphan share" and toxicity issues. Chosen as allocation consultant to work with a former judge, we ended up working together as co-mediators. The matter was resolved within about 4 weeks of the start of our joint meetings with the parties.
- *Implementation of Superfund Remediation.* Bitter multiparty dispute involving the implementation of a creative remediation facility and ground water contamination.
- *Remediation.* Mediator and chosen as arbitrator: variety of contractual & insurance related disputes arising out of Lake Michigan remediation work. U.S. v. Outboard Marine, 78-C1004. Matter settled before arbitration.
- *Landfill Superfund Site.* Project involving the initial facilitation and successful implementation of agreements involving more than 200 settling parties.

#### Other Allocation

- *Defense Costs for Several Decades of Asbestos Claims.* Detailed process design & mediation of 5 year dispute over allocation of defense costs for numerous carriers & insured arising out of several decades of asbestos claims.
- *Several \$Million of Damages among 17 parties.* Mediation: 100+ member class, 16 defendants and the construction of a large oceanfront condominium.
- *11 parties, Gas Explosion/Multiple Deaths & Injuries at a Federal Facility.* Mediation with federal government, a utility, several corporations and individual plaintiffs.
- *15 parties, Real Estate/Commercial.* Mediation: several banks, 21 franchises, nearly two dozen real estate transactions and a \$25M lawsuit.

#### Ground Water Contamination

- *Tank Farm.* Mediation: gas/diesel contamination, fraud, insurance, & construction claims arising out of the construction of a large truck terminal.
- *Containment System.* Court appointment, 9 separate fuel tank sites, 22 counsel and the design, installation and performance of a fuel containment system.

#### Waste Water Treatment

- *9 Construction/Contract related Disputes.* Mediations: several public entities, general contractors, subcontractors, and architect/engineers involving the construction and operation of separate large treatment facilities in 6 states.
- *"Deep Tunnel" Project.* "Med/arb" with outside technical experts; conducted mediation of seven figure dispute involving the design and operation of "sluice gates" in a massive "Deep Tunnel" facility.

#### Permit Denial

- *Municipal Waste Landfill.* Pending mediation between owner and engineer involving the denial of a permit by a state environmental agency.

#### Siting

- *Proposed Landfill.* Design of a public process to facilitate the siting of a large regional landfill. Project involved convening all interested parties and reaching consensus on a regional neutral to manage the multiday process.

(Ex. 1)



Innovative  
Solutions  
To Conflict

WILLIAM E. HARTGERING  
REPRESENTATIVE COMPLEX, MULTIPARTY, HIGH STAKES MATTERS

A full time mediator & arbitrator since 1981, Bill established the Chicago ENDISPUTE office in 1982. Appointed an independent neutral by federal & state courts in 10 states, his national practice includes hundreds of complex, high stakes, multiparty matters. Prior to 1981 he practiced law, concentrating on both plaintiffs' & defense employment, real estate, commercial and insurance related litigation. We invite you to contact us for references on any of these matters.

**Multiple Site  
Multiple Court  
Consolidated  
or Class Action  
Litigation**

*Michigan. Court appointment, 9 fuel tank sites, 22 separate counsel.* Dispute over the design, manufacture & performance of a fuel containment system.  
*Florida, W. Virginia. 15 party, 3 court, \$14M damages,* involving alleged fraud, legal/accounting malpractice, officer/director liability & coverage issues.  
*Illinois. 15 party, bitter \$25M matter involving several banks, 21 stores,* nearly two dozen transactions and a national restaurant franchiser.  
*Wisconsin, Illinois, Minnesota. Carson's Bankruptcy.* Approved by federal court to design and implement a mandatory mediation process for an expected 530 claims, including personal injury, trade, employment, and tax preference.  
*Texas, Colorado, Arizona. US Home Bankruptcy.* Court appointment, 8 class action & consolidated contract, construction and insurance related mediations.  
*Missouri. 400 Asbestosis claims.* Appointed "special co-mediator" for a group of consolidated asbestosis claims which were later transferred to Ohio.  
*Virginia, Wisconsin, Kentucky, Illinois. Dalcon Shield.* Referee, 8 matters.

**Fire/Explosion  
Multiple Death,  
Serious Injury,  
Substantial  
Property Damage**

*Indiana. 15 party fire/gas explosion on a military base.* Several \$M damages, multiple deaths, injuries & property damage involving the federal government.  
*Indiana. "Spontaneous failure" of 1300 overhead glass panels.* Public auditorium: Joint Venture/Fortune 50 companies in a bitter 13 year dispute.  
*Indiana. Freezer failure, major distribution center.* Ocean of ice cream losses.  
*Missouri. Kiln burn through & explosion.* Substantial business interruption.  
*Illinois. Prison Bus/Car Collision.* Loaded prison bus pulled to the side of the road, hit by car involved in high speed chase while eluding the police.  
*Illinois. Multicar, Interstate chain reaction accidents in the fog,* caused by convicted, intoxicated driver with assets beyond insurance.

**30-100+ Party  
Building Failures**

*Michigan. 33 international parties, \$42M damages.* Coverage disputes, exterior wall leakage & other problems with a new 33 story mixed use building.  
*New Jersey. 250+ contested items, 16 defendants, 100+ condo owners.* Failure of an oceanfront high-rise exterior and several \$million of damages.

**Complex  
Public/Private  
Construction  
Projects**

*Denver, Knoxville, Tampa Airports & Chanute AFB.* 8 contract/construction mediations at the new Denver, Knoxville & Tampa airports & Chanute AFB.  
*Hong Kong.* Government/private sector project to provide 3 multiday mediation training workshops to all participants of the local construction industry.  
*Alaska, North Carolina, New York, Florida, Georgia, Nevada, Ohio.* Dozens of matters involving schools, hospitals, courts, housing, recreation areas, lock & dam projects, co-generation & waste treatment plants, and a 750 slip marina.

**8-10 Figure  
Alleged Damages**

*Georgia. 100 contested items, \$40M claim, 7 figure counterclaim,* involving a complicated replacement of a massive recovery boiler.  
*New York, California, Illinois. Discovery.* Appointed to review thousands of documents for attorney client/work product privilege in 10 figure arbitration.

222 S. Riverside Plaza  
Suite 1850  
Chicago, IL 60606  
800-445-4650 or  
312-655-0555  
Fax 312-655-0644

(Ex. 2)



Innovative  
Solutions  
To Conflict



A full time mediator and arbitrator since 1981, Bill is a nationally known ADR professional whose expertise includes hundreds of sensitive complex multiparty cases arising in over 40 states and foreign countries, appointments by federal and state judges in 10 states, and the design and resolution of groups of cases via customized dispute resolution systems.

## WILLIAM E. HARTGERING

A full-time ADR professional since 1981, Bill established the Chicago J-A-M-S/ENDISPUTE office in 1982. Prior to 1981, he practiced with multi-city law firms, concentrating on commercial, employment, real estate and insurance related litigation. He represented both plaintiffs and defendants.

### ADR EXPERIENCE

Mediation is non binding, but like arbitration, *it can usually only be done once*. Thus, the particular, demonstrated experience of the neutral is critical to the effective resolution of difficult disputes. Bill's national practice includes hundreds of successful resolutions of virtually every type of complex multiparty or highly sensitive matter, including:

- Banking/Estates:** Bank as stakeholder, trust/will contests, FDIC/RTC, Letter of Credit issues.
- Bankruptcy:** System design and mediations for Chapter 11 estates in 5 courts.
- Business "M&A," Partnership Dissolution,** Intra Corporate issues arising after a merger or a potential/actual dissolution.
- Class Actions:** Involving products, employment and condominium associations.
- Construction:** Complex matters arising in 25+ states involving 3-33 parties.
- Discovery Management:** Document review, attorney/client, work product issues.
- Employment:** Race, sex, age, ADA, ERISA, harassment, wrongful discharge, "golden parachute" matters in 10 states.
- Environment:** Superfund allocation, siting, permit, groundwater contamination issues.
- Franchise/Dealer/Manufacturer:** add point, termination and chargeback issues.
- Healthcare:** HMO/Hospital/Physician/staff relations, plan coverage, practice dissolution.
- Insurance Issues/Injury/Coverage:** Multiple death/serious property loss from fire, explosion, car/bus/train accidents.
- Professional Malpractice:** Law, medicine,

accounting, architecture, engineering, dentistry, psychotherapy, and psychiatry.

- Licensing/Patent/Software:** Scope of license, infringement, and royalty issues.
- Real Estate:** 15+ party workouts, leases, development projects, zoning, and title issues.
- UCC, Securities, RICO** issues.

### REPRESENTATIVE MATTERS

- Public/Private construction projects** at the Denver, Knoxville and Tampa airports.
- 15 party fire/gas explosion** involving deaths and serious injury on a military base.
- 15 party, 3 court, \$14M damages** involving the failure of a century old life insurance firm.
- 22 separate counsel, 9 tank sites** involving the performance of a fuel containment system.
- Multicar, chain reaction accident** in fog, caused by drunk driver with substantial assets.
- 33 International Parties, \$42M damages:** Coverage issues, exterior wall leaks & other major problems with a new 33 story building.
- 100 contested items, \$40M claim, 7 figure counterclaim,** replacement of a massive boiler.
- "Spontaneous" failure** of some of 1300 overhead glass panels in a public auditorium.

### EDUCATION/TEACHING

- J.D., Northwestern University School of Law** (appointed, *Law Review*), Adjunct Faculty
- B.S., cum laude,** Claremont McKenna College
- Travel** in Hong Kong, Japan, across Russia on the Trans Siberian Railroad, Eastern/Western Europe
- Kellogg Graduate School of Management,** Northwestern University, Adjunct Faculty
- National Institute of Trial Advocacy,** Faculty
- Workshop leader,** 30+ programs

*Nationwide references are available upon request.*

222 S. Riverside Plaza  
Suite 1850  
Chicago, IL 60606  
800-445-4650 or  
312-655-0555  
Fax 312-655-0644

(Ex. 3)





**WILLIAM E. HARTGERING**

**REPRESENTATIVE COMMERCIAL MEDIATION & ARBITRATION REFERENCES**

A full time mediator & arbitrator since 1981, Bill established the Chicago JAMS/ENDISPUTE office in 1982. Appointed by federal & state courts in 10 states, his national practice includes hundreds of complex, high stakes, multiparty matters. Prior to 1981, he practiced law, concentrating on corporate, commercial, and both plaintiffs' & defense employment and insurance related tort litigation.

- Arizona**      *Phoenix.* Dial Corporation, Travis Clemens, Senior Labor Attorney  
Jaburg & Wilk, Alan Susman  
Norris & O'Daniel, Ray Norris  
Raymond J. Slomski, P.C., Ray Slomski, Jim Abernathy  
Treon Strick Lucia & Aguirre, Mike Stark  
*Tuscon.* DeConcini, McDonald Brammer Yetwin & Lacy, Mike Urman
- California**      *Orange.* Hagenbaugh & Murphy, Dan Leipold  
*Los Angeles.* Wilson Elsner Moskowitz Edelman & Dicker, James Stankowski  
*San Bruno.* Guy F. Atkinson of California, Bill Hart  
*San Jose.* Berliner Cohen, Bill Goines  
*Walnut.* Harmon Contract W.S.A. Inc., Dan Green
- Connecticut**      *Hartford.* Shawmut Bank, Brad Wainman, Stephen Spencer  
*Wethersfield.* Baker & Fulco, A. Robert Baker
- Colorado**      *Denver.* Weller Freidrich Ward & Andrew, Edgar Neal  
Winzenberg, Leff & Mitchell, Paul Mitchell  
*Fort Collins.* Rebecca Elliott, P.C.
- Florida**      *Jacksonville.* Mahoney Adams & Creiser, Bill Adams  
Coker Meyers Schickel Cooper & Sorenson, Ron Owen  
*Orlando.* Lyon McManus & Jones, Rodney Jones, Fred Lyon  
*Tampa.* Allen Dell Frank & Trinkle, Lynn Cole  
*Sarasota.* Abel Brand Brown Russel & Collier, Daryl Brown, Steve Chase
- Georgia**      *Atlanta.* Alston & Bird, James Grant  
Bondurant Mixson & Elmore, M. Jerome Elmore  
Cushing & Morris, Shawn Holtzclaw  
Fisher & Phillips, Christine Howard  
Griffin Cochrane & Marshall, Buck Griffin, Lee Davis, Henry Parkman  
Hunton & Williams, Charles Perry  
P.A. Wade & Associates, Inc., Peter Wade  
Porter & Barrett, Brenda Orrison  
Shapiro Fussell Wedge & Smotherman, J. Ben Shapiro, Jr.  
Smith Currie & Hancock, Jim Stephenson, Glower Jones, Jim Bidgood  
*Augusta.* Fulcher Hagler Reed Hanks & Harper, Art Davidson  
*Savannah.* Hunter McLean Exley & Dunn, Robert Glen, Tim Tolar

**Illinois**

*Chicago.* Aronson Smith & Cross, Greg Glisich  
Bell Boyd & Lloyd, Stan Sklar, Matt Phillips  
Clausen Miller, Jim Hoey, Tom Ryerson, Steve Marcus  
Gordon & Glickson, Mark Gordon, Barry Weiss  
Hinshaw Culbertson, Kevin Sido, Steve Hurst, Dan Boho  
Hopkins & Sutter, William Rattner  
Keck Mahin & Cate, Larry Selander, Eric Singer  
Kelley Drye & Warren, Julian Solotoovsky, David Sudzus  
Kirkland & Ellis, James Schink  
Latham & Watkins, William Gibbons  
Mayer Brown & Platt, Greg Barton  
McDermott Will & Emery, Harry Sangerman, Jillisa Britan  
McKenna Storer Rowe White & Farrug, Sam Purvis, Evan Williams, Bruce Marr  
Miller Shakman Hamilton Kurtzon & Schlifke, Mike Shakman, Geraldine Brown  
Neal Gerber & Eisenberg, David Schenk, Robert Radasevich  
Pretzel & Stouffer, Richard Wisner  
Ross & Hardies, Mike Woyar  
Seyfarth Shaw Fairweather & Geraldson, Peter Woodford, John O'Malley  
Schwartz & Freeman, Steve Chesler, Aaron Hoffman  
Sidley & Austin, Gerald Angst, Mary Flood, Patrick Casey  
Sonnenschein Nath & Rosenthal, Eric Osterlie, Kenneth Kolman,  
Vedder Price, Richard Robin Richard Zenle, Mike Cleveland  
Wilson Elsner Moskowitz Edelman & Dicker, Ben Heller, John McGahey  
Winston & Straun, Thomas Wiegand  
Illinois Attorney General's office, Paul Arvites  
US General Services Administration, Marcy Sherrill, Regional Counsel  
*Springfield.* Illinois Capital Development Board, Fred Hahn, Claire Gibson

**Indiana**

*Indianapolis.* Baker & Daniels, David Herzog, Nancy Bollinger, Jay Ham  
Barnes & Thornberg, Mike Fruenwald  
Bingham Summers Welsh & Spilman, Duane Denton  
Cohen & Malas, Irwin Levin, Richard Shevitz  
Ice Miller Donadio & Ryan, Fred Biesecker, Gary Dankert, Jim O'Neil  
Johnson Smith Pence, Andrew Hull  
Kreig DeVault Alexander & Capehart, Jim McIntire, Malcolm Mallette  
Lock Reynolds Boyd & Weisell, Hugh Reynolds, Randall Riggs  
Lee Tarvin, James McGuire, Joseph McGuire  
White & Raub, Richard Riegner  
Wilson Kehoe & Winningham, Bill Winningham  
*US Attorney.* Judith Stewart, Tom Kieper, Jill Zengler  
*South Bend.* First Source Bank, Vincent Tamburo, General Counsel

**Iowa**

*Davenport.* Lane & Waterman, Terry Giebelstein  
*Des Moines.* Ahles Cooney Dorweiler Haynie Smith & Abbel, H. Richard Smith  
Shearer Templar Pingel & Kaplan, John Templer

**Maryland**

*Baltimore.* Semmes Bowen & Semmes, J. Snowden Stanley, Jr.  
Law Offices of Ron Landsman, Ronald Francis Sauer  
United Industrial, Robert Worthing, General Counsel

**Massachusetts** *Boston.* Testa Hurwitz & Thibault, John Welsch

**Michigan**     *Grand Rapids.* Wheeler Upham, John Roels, Robert Gillette  
 Miller Canfield Paddock & Stone, Robert Dejong  
 Nantz Litowich Smith & Girard, Mark Smith  
 Tolley VandenBosch & Walton, Mike Walton  
 McShane & Bowie, Mark VandenBosch  
 Dykema Gossett, Richard Baxter, Bill Brennan  
 Smith Haughey Rice & Roegge, T.J. Ackert, Pat Geary  
 Plunkett & Cooney, Mark Verwys  
 Bremmer Wade Nelson Lohr & Corey, William Bremmer  
 Harvey Kruse Westen & Milan, Gary Stec  
 Rhoades McKee Boer Goodrich & Titta, Steve Hilger, Greg Timmer  
 Varnum Riddering Schmidt & Howlette, Peter Armstrong, Joy Fossel  
 Hon. Dennis J. Kolenda, Chief Judge, Circuit Court of Kent County  
*Detroit Area.* Cooper Fink & Zausmer, Ted Peters, Mark Zausmer  
 Clark Hill PLC, David Hayes, Edward Hood

**Minnesota**     *Minneapolis.* Dorsey & Whitney, Steve Wells  
 Ellerbe Becket Company, Douglas Green, General Counsel  
 Fabyanske Svoboda Westra & Hart, Marv Fabyanske

**Missouri**     *St Louis.* Armstrong Teasdale Schlafly & Davis, Tal Sant  
 Green Hoffman & Dankenberg, Gregory Hoffman  
 Greensfelder, Hemker & Gale, Jerry Richardson  
 Harris Dowell Fisher & Harris, Ron Fisher  
 Hoare, Mike J. & Associates, Mike Hoare  
 Sedey, Mary Anne & Associates, Bill Moench, Mary Anne Sedey  
 Vines Frankel Rubin Bond & Dubin, Kenneth Chackes, of Counsel  
*Equal Employment Opportunity Commission,* Donna Harper, Trial Division

**Nevada**     *Las Vegas.* Lynde Seldon, Chartered., Lynde Seldon, Francis Lynch  
 Alverson Taylor Mortenson & Nelson, Bruce Alverson, Michael Stevenson

**New Jersey**     *Newark and Central Area.* Barry & Moran, Mark Kluger  
 Cole Schotz Meisel Forman & Leonard, Tom LaConte  
 Watson Stevens Fiorilla & Rutter, John Fiorilla

**New York**     *New York City.* Kay Scholer Fierman Hays & Handler, Steve Fox, Jon Hochman  
 Gottesman Wolgel Secunda Malamy & Flynn, H. Wolgel, Ken Malamy  
 Coopers & Lybrand, Walter Ricciardi, Assoc. General Counsel

**North Carolina**     *Charlotte.* More & Van Allen, Dan Clodfelter  
 Petree Stockton, Richard Fay  
*Greensboro.* Brooks Pierce McLendon Humphrey & Leonard, Michel Meeker  
*Wilmington.* Hogue Hill Jones Nash & Lynch, David Nash  
*Winston Salem.* Womble Caryle Snadridge & Rice, Howard Grubbs

**Ohio**     *Akron.* Roadway Services, Inc., Jim Maxwell, Assoc. General Counsel  
*Cleveland.* Thompson, Hine & Flory, Jeffrey Appelbaum, David Nash  
*Toledo.* Marshall & Melhorn, Donald Melhorn, Tom Palmer  
 Babcock & Wilcox, Tom Harden, Assoc. General Counsel  
 Libby Owens Ford, Richard Berry, Jr.

**Oregon** *Portland.* David Kenagy, Dean Wilamette University College of Law,  
formerly, with Thelen Marren Johnson & Bridges, Los Angeles

**Pennsylvania** *Philadelphia area.* Williams Building Diagnostics, Inc., Mark Williams  
*Pittsburgh area.* Babst Calland Clemets & Zomnir, William Conley  
Burns White & Hickton, Robert Ray  
Edward B. Wood & Associates, Ed Wood

**South Carolina** *Columbia.* Turner, Padget Graham, & Laney, Elbert Dorn  
*Greenville.* Love Thronton Arnold & Thomason, Theron Cochran  
Horton Drawdy Ward & Johnson, David Ward

**Tennessee** *Chatanooga.* Leitner Warner Moffitt Williams Dooley, et al., David Noblit  
*Knoxville.* Lewis King Kreig & Waldrop, Loy Waldrop  
*Nashville.* Bass Berry & Sims, Bruce Foster  
Davidson & Golden, Robert Davidson, CPA

**Texas** *Dallas.* Gardere & Wynn, Steve Henry  
Jones Day Reavis & Pouge, Mike Albers, John Pinkerton  
Thompson & Knight, G. Luke Ashley  
*Houston.* Chalker, Bair & Associates, Ron Bair, Ross Asher  
Cohen & Associates, Jay Cohen, Lee Gross

**Utah** *Salt Lake City.* Snow Christensen & Martineau, A. Dennis Norton  
Parsons Behle & Latimer, Thomas Beckett

**Virginia** *McLean.* Watt Tieder & Hoffer, Robert Fitzgerald, Francis McCullough  
*Richmond.* KSB, Inc., Patrick Reddington, President  
Christian Barton Epps Brent & Chappell, Philip Goodpasture  
*Vienna.* Wickwire Gavin, Mike Loulakas, Shannon Briglia

**Washington D.C.** *District of Columbia.* Arnold & Porter, Stephen Sacks  
Coale Allen & Van Susteren, Phil Allen  
Morgan Lewis & Bockius, Lowell Martin  
*Department of Justice,* Lawrence Puckett, Robin Lawrence, Rachel Cramer  
*Environmental Protection Agency,* David Batson  
*Federal Deposit Insurance Corp,* Cathy Costantino  
*Small Business Administration,* Deborah Charette

**Washington** *Seattle.* Miller Nash Wiener Hager & Carlson, James P. Donohue

**W. Virginia** *Charleston.* Jenkins Fenstermaker Kreiger Kays & Farrell, Jack Jenkins, Jr.

**Wisconsin** *Appelton.* McCarty, Curry Wydeven Peters & Haak, Randall Haak  
*Green Bay.* Godfrey & Kahn, Joeseeph Hicks  
*Madison.* Wickwire Gavin, Robert Smith  
*Milwaukee.* Cook & Franke, Tom Harrington  
Quarles & Brady, Jerry Kerkman, Mary Pat Ninneman  
Wessels & Pautch, Frank Gumina  
*Oshkosh.* Oshkosh Truck, Thatcher Peterson  
*Waukesha.* Svedala Industries, Inc., John Fons, General Counsel